IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8946 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DILIP DHANJIBHAI RANA

Versus

REGIONAL LABOUR COMMISSIONER

Appearance: MR VB GHARANIYA for Petitioner No. 1-13
MR ARVIND K THAKUR for Petitioner No. 1-13
RULE SERVED BY DS for Respondent No. 1
MR UI VYAS for Respondent No. 2

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 05/07/2002

ORAL JUDGEMENT

The petitioners have challenged the order passed by the Government of India, Ministry of Labour, dated 27th May, 2001. By the said order, the request made on behalf of the petitioners is rejected and reference is not made by the Government on the ground that the concerned workmen have not completed 240 days in a particular year and, therefore, no protection under the Industrial Disputes Act is available. The said decision is challenged by the petitioners.

It is contended that it is not for the authority to adjudicate the said question and it is for the competent court to decide the merits of the issue. It is

submitted that, at the time of making reference it was not open for the Government to consider the aforesaid aspect as that question is required to be adjudicated by the competent Court to whom the dispute is referred. In this behalf, the petitioner has relied upon the decision of this Court (Coram : H.K. Rathod, J.) in Vinod Babubhai Patni v. Govt. of India (Special Civil Application Jo.2063 of 2001), dated 11.1.2002.

In that view of the matter, this petition is allowed. The impugned order is quashed and set aside and the respondent is directed to pass appropriate orders under Section 10 of the Industrial Disputes Act and the respondent is directed to reconsider the aforesaid decision and to pass appropriate orders accordingly. The appropriate order may be passed by the Government within a period of two months from the date of receipt of the writ of this Court. At the time of taking such fresh decision, the ratio decidendi laid down by the Apex Court in Telco Convoy Drivers Mazdoor Sangh & others v. State of Bihar and others, AIR 1989 SC 1565 also may be taken into account. The petition is accordingly allowed. Rule is made absolute with no order as to costs.

5th July, 2002 (P.B.Majmudar, J.)

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(apj)